

**DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINED LAND RECLAMATION**

GUIDANCE MEMORANDUM¹ No. 16-07

Issue Date: September 19, 2007

Subject: Permitting and Bonding of Shared Structures/Facilities

This guidance is intended to address permit applications that propose to share facilities or structure(s) with more than one separately permitted coal mining operation, as provided by 4VAC25-130-778.22 of the Virginia Coal Surface Mining Reclamation Regulations.

For example, a shared facility or structure could be a haulroad, access road, buildings used to facilitate the mining or coal preparation operations.

The parties applying for permits to share facilities or structures will be individually required to demonstrate their legal right or authority to utilize the property, facility, or structure in question. If there is a dispute as to a party's right to utilize the facility or structure, please be advised that the Division does not have the jurisdiction or authority to adjudicate property disputes².

The company first applying to construct and/or permit the property, facility(ies), or structure(s) shall include the plans for such in its application package for the Division's consideration and review. The permit applicant shall bond the facility(ies) or structure(s) as required by Parts 4VAC25-130-800 or 4VAC25-130-801 of the regulations.

As provided by item #10.4 of the electronic permit application guide (Existing and Shared Structures)³, the plans for each facility or structure that is to be used by two or more separately permitted mining operations (that are controlled by entirely separate business entities) may be included in one permit application and referenced in the other application(s). Each permittee shall be required to provide adequate performance bond coverage for the facility or structure unless a sharing agreement is reached with the other business entities. If such an agreement is executed, a copy of the agreement must be provided as an attachment to item #10.4 of the permit application.

The permit application plans should describe each existing structure proposed to be used; including a location, current condition, date of construction, and a demonstration that the structure meets the applicable performance standards of the regulations. In the event the facility or structure does not

¹ This Memorandum is to be considered a guideline issued under the authority of § 45.1-230.A1 of the Code of Virginia which reads:

"In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code."

² See §§45.1-228B and 45.1-238B(5) of the Code of Virginia, as amended.

³ http://www.dmme.virginia.gov/dmlr/Forms/DMLR-PT-034eg_Application_Guide.doc

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meet the performance standards, a compliance plan for each structure that must be modified or reconstructed should be included as an attachment to Item #10.4.

Should other permittees apply to share the facilities or structures, each application shall specifically provide to the Division –

- The identity or description of the facility(ies) or structure(s) that will be shared.
- If applicable, the Coal Surface Mining Operation permit number and the entity that currently has the facility(ies) or structure(s) under permit and performance bond.
- A copy of the executed legal agreement with the current permit holder that sets forth the respective responsibilities of each party for the shared facility or structure.

Each party wishing to permit a shared facility or structure shall submit the applicable permit application and fees⁴ for each individual permit containing the areas encompassed by the facility or structure.

In the event the permittee that bonded the facility or structure elects to complete operations or applies for bond reduction, the permittee shall notify the other permittee(s) sharing the facility or structure concurrently with the completion report or bond reduction application submitted to the Division. The original permittee should submit a “Request for Relinquishment⁵” with its bond release application for the shared structure or facility. The relinquishment would be to the remaining permittee(s), who will assume control and/or maintenance of the facility or structure.

In the application review process, in a situation where the permit applicant proposes to mine or dispose of excess spoil/refuse material in proposed permit areas already permitted by another company or that have been included in an earlier application currently under Division review, (except for the facility(ies) or structure(s) that will be shared, as approved by the Division) -

- if a new application, it will not be accepted by the Division Field Inspector for review.
- if the application has been under current review, it will be returned to the company and/or consultant with an explanation that no further Division review will take place until the matter is resolved as to the parties’ rights to operate on or utilize the areas. Written documentation resolving the conflicting interests will have to be provided to the Division prior to application resubmittal.

Should you have any questions regarding this guidance memorandum, please contact Permitting Reclamation Program Manager (276 523-8160) or Chief Engineer (276 523-8156).

⁴ See §4 VAC 25-130-777.17 of the Virginia Coal Surface Mining Reclamation Regulations

⁵ Request for Relinquishment form is DMLR-PT-027, which is available on the DMME Internet site at <http://www.dmme.virginia.gov/dmlr/docs/downloads.shtml>.